



County of San Bernardino
F A S
STANDARD CONTRACT

FOR COUNTY USE ONLY

E	<input checked="" type="checkbox"/>	New	Vendor Code		SC	Dept.	Contract Number	
M	<input type="checkbox"/>	Change						
X	<input type="checkbox"/>	Cancel						
County Department County Counsel						Dept.	Orgn.	Contractor's License No.
County Department Contract Representative Alan K. Marks						Ph. Ext. (909) 386-5459		Amount of Contract \$
Fund	Dept.	Organization	Appr.	Obj/Rev Source	Activity	GRC/PROJ/JOB Number		
Commodity Code			Estimated Payment Total by Fiscal Year					
			FY	Amount	I/D	FY	Amount	
Project Name Contract for Legal Services - Replacement Benefits Plan								

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and

Name
Hanson, Bridgett, Marcus, Vlahos, and Rudy, LLP

hereinafter
called

Attorneys

Address 333 Market Street, 23rd Floor
San Francisco, CA 94105-2173

Phone 415-777-3200 Birth Date

Federal ID No. or Social Security No.

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

WHEREAS, County has determined that it is in the best interest of County to retain Attorneys to advise and assist in the representation of the County in connection with the County's evaluation of a Replacement Benefits Plan and the establishment of such Plan, and such related matters as may be assigned by the County Counsel; and

WHEREAS, Attorneys have special skills, knowledge, experience and expertise in the area of employee retirement benefit plans, and more particularly Replacement Benefits Plans to effectively to advise, assist, and otherwise represent the County on such matters; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. **Representation of County.** County hereby retains the services of Attorneys as an independent contractor to advise and assist in the representation of the County and its officers and employees in the matters referred to above in the first WHEREAS Clause, and to provide such other advice, services and representation on related matters as may be assigned by the County Counsel.
2. **Performance of Services and Hourly Rates.** It is agreed that Attorneys shall only assign persons to perform services under this Agreement who are approved by the County for performing the services for the County and that when feasible Attorneys will use lower compensated employees in order to reduce the costs of services to County. It is further agreed that Robert Blum shall be lead attorney and supervise all work under this Agreement. The parties agree that the hourly rate for the principal attorneys approved to work under this Agreement shall be as listed on the attached Attorneys' Standard Hourly Billing Rates, Exhibit "A."
3. **Baseline Documents for Replacement Benefits Plan.** It is understood that Attorney Robert Blum has developed a set of "base line" documents for a replacement benefit plan for 1937 Act counties and retirement systems. The base line documents include a plan, resolutions for the board of supervisors and the board of retirement, Memorandum of Understanding (MOU) between the county and retirement system, and MOU between the county and special districts. The term "base line" means that the documents include all of the provisions Attorneys believe are needed in common for 1937 Act counties and retirement systems, are in compliance with tax laws, and address administrative and other issues customary in plan documents. Attorneys' flat fee for the "base line" documents is \$4,500. Changes to these "base line" documents are made at Attorneys' Standard Hourly Billing Rates, Exhibit "A."
4. **Maximum Amount of Contract.** It is hereby agreed that the maximum amount for legal services and expenses shall not exceed \$30,000.
5. **Coordination of Services.** Attorneys shall consult with the County through County Counsel concerning all substantive positions and procedural steps to be taken by Attorneys in the course of advice and representation pursuant to this Agreement.
6. **Billing.** Attorneys shall submit monthly statements to County Counsel for fees and costs for services performed under this Agreement and County shall pay its obligations to Attorneys within a reasonable time after receipt of billings. Such monthly statements shall indicate the services performed, the

person(s) performing the services and provide an accounting of work time spent for which payment is requested under this Agreement. Fees will be charged in one-tenth hour increments.

7. **Term and Termination.** This Agreement shall commence on Tuesday, February 25, 2003, and terminate as follows: Attorneys and County reserve the right in their discretion to terminate this Agreement at any time Attorneys or County deem necessary or advisable upon fifteen (15) days written notice to the other party. Upon receipt of such notice of termination, Attorneys shall provide no further services to County without specific request or authorization of the County Counsel. Services of Attorneys hereunder shall not be deemed terminated until Attorneys have had an opportunity to, and upon receipt of such notice of termination Attorneys are hereby authorized to, obtain leave of court to withdraw from any court proceeding concerning which Attorneys are attorney of record for County. In the event of termination of this Agreement Attorneys shall immediately provide County with all materials, documents and work product related to services performed under this Agreement.
8. **No Assignment.** The experience, skill and expertise of Attorneys are of the essence to this Agreement. Attorneys shall not assign (whether by assignment or novation) this Agreement or delegate their duties hereunder in whole or in part or any right of interest hereunder without the prior written consent of County.
9. **Amendment.** This Agreement may be amended or modified only by written agreement signed by each of the parties, and a failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or provisions.
10. **Prior Approval.** Unless otherwise instructed, Attorneys must obtain the approval of County Counsel concerning the following:
 - a. Retention of any consultant or expert witness to assist with this matter;
 - b. Making any settlement proposal on County's behalf;
 - c. Filing any action, response or motion;
 - d. Travel expenses to and from San Bernardino County;
 - e. Undertaking research of more than twelve (12) hours on any particular issue; and,
 - f. Any expense item exceeding Five Hundred Dollars (\$500.00).
11. **Copies of Work Attorneys Will Provide to County.** Attorneys must provide County Counsel with copies of all:
 - a. Pleadings and legal memoranda prepared in connection with any County matter hereunder;
 - b. Court rulings; and,

c. Significant correspondence related to any County matter hereunder.

12. **County's Legal Billing Review.** County shall have the right to review all billing statements prior to payment to Attorneys. This review may include, but not be limited to:

- a. The determination that the hourly fee charged is consistent with this Agreement's approved hourly rate schedule;
- b. The determination that the multiplication of the hours billed times the approved rate schedule dollars is correct;
- c. The determination that the bill is clearly divided into billing rate categories based on hours worked on each activity for each day by each attorney and costs which Attorneys have advanced to consultants and experts, depositions, transcript expenses, and other chargeable expenses; and,
- d. The determination that each item charged is the usual, customary, and reasonable charge for the particular item. If County determines an item charged is greater than usual, customary, or reasonable, or is duplicative, ambiguous, excessive, or inappropriate, County shall either return the bill to Attorneys with a request for explanation or adjust the payment accordingly, and give notice to Attorneys of the adjustment.

13. **Expenses.**

Reimbursable ordinary expenses shall include, but not be limited to:

- a. Deposition fees;
- b. Transcript fees;
- c. Long distance telephone charges;
- d. Process service;
- e. Westlaw or Lexis online charges for case research; and,
- f. Photocopying at the rate of \$.10 per page.

Reimbursable extraordinary expenses shall include charges for which Attorneys have obtained County's prior approval. Such expenses shall include, but not be limited to:

- a. Consultants;
- b. Expert witnesses;
- c. Travel expenses to and from San Bernardino County; and,

- d. Any expense item exceeding Five Hundred Dollars (\$500.00).

Non-reimbursable expenses shall include, but not be limited to:

- a. Rent, utilities, word processing, in-house courier, local telephone charges, office supplies, support staff and local area travel and meal expenses.;
- b. Charges for time spent to provide necessary information for County audits or billing inquiries; and,
- c. Charges for work performed which had not been authorized by County. Such work shall be a gratuitous effort by Attorneys.

- 14. **County Counsel's Authority.** The County Counsel of County shall have the authority to exercise County's rights and authority under this Agreement.
- 15. **Notices.** All notices herein required shall be in writing, and delivered in person or sent by certified mail, postage prepaid, addressed as follows:

Attorneys:

Robert Blum, Attorney at Law
Hanson, Bridgett, Marcus, Vlahos, and Rudy, LLP
333 Market Street, 23rd Floor
San Francisco, CA 94105-2173

County:

Alan K. Marks, County Counsel
County Government Center
385 North Arrowhead Avenue
San Bernardino, California 92415-0140

or at such other address or to such other persons as either of the parties may from time to time designate by written notice given as herein provided. Notice given by mail as required above shall be deemed delivered three (3) County business days after mailing.

- 16. **Consent to Joint Representation.** The County hereby consents to dual representation by Attorneys of both the County and the San Bernardino County Employees' Retirement Association relative to the establishment and maintenance of any Replacement Benefits Plan. County acknowledges receipt of a letter dated January 26, 2003, addressed to County Counsel regarding the

joint representation. The County agrees that it will be responsible for paying the entire fee for Attorneys' work.

17. **Conflicts.** Other than as provided in the preceding section regarding Joint Representation, Attorneys shall disclose any conflict circumstance to County and obtain any needed approval or waiver by County and its officers. Any document evidencing such disclosure and any document evidencing such approval or waiver shall be deemed to be a part of this Agreement.

18. **Hold Harmless and Insurance.**

A. **Indemnification** - Attorneys agree to indemnify, defend with counsel approved by County and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement caused by any negligent act or omission or any willful misconduct of Attorneys, and for any costs or expenses incurred by the County resulting therefrom, except where such indemnification is prohibited by law.

B. **Insurance** - Without in anyway affecting the indemnity herein provided and in addition thereto, Attorneys shall secure and maintain throughout the Agreement the following types of insurance with limits as shown.

(1) **Workers' Compensation** - A program of Workers' Compensation insurance or a state-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons providing services on behalf of that party and all risks to such persons under this contract.

(2) **Comprehensive General and Automobile Liability Insurance** - This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).

(3) **Errors and Omissions Liability Insurance** - Combined single limits of \$1,000,000 for bodily injury and property damage and \$3,000,000 in the aggregate, **or**

(4) **Professional Liability** - Professional liability insurance with limits of at least \$1,000,000 per claim or occurrence.

C. **Additional Named Insured** - All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insureds with respect to liabilities arising out of the performance of services hereunder.

D. Waiver of Subrogation Rights - Attorneys shall require the carriers of the above-required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors.

E. Policies Primary and Non-Contributory - All policies, except for the Workers' Compensation, required above are to be primary and noncontributory with any insurance or self-insurance programs carried or administered by the County.

F. Proof of Coverage - Attorneys shall immediately furnish certificates of insurance to the County's Department evidencing the insurance coverage, including endorsements, above required prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Attorneys shall maintain such insurance from the time Attorneys commence performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this contract, the Attorneys shall furnish certified copies of the policies and all endorsements.

G. Insurance Review - The above insurance requirements are subject to periodic review by the County. The County's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk. Any such reduction or waiver for the entire term of this Agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Attorneys agree to execute any such amendment within thirty (30) days of receipt.

H. Failure to Have Insurance - In the event County receives a notice of cancellation concerning any of the required policies, or should fail to have in effect the required coverage at any time during this Agreement, County may give notice to Attorneys to immediately suspend all activities and/or notice to reinstate or acquire the affected coverage. Should Attorneys fail to reinstate or acquire the affected coverage within ten (10) days of County's notice to reinstate or acquire such coverage, County may either terminate this Agreement, reinstate or acquire the affected coverage, and Attorneys shall reimburse County for the necessary cost at County's option. If Attorneys do not reimburse County within ten (10) days after demand by County, County shall have the right to withhold from future amounts due under this Agreement or otherwise due to Attorneys the sum County has expended until County is reimbursed in full.

19. **Arbitration.** Arbitration shall be limited to any controversy or claim between the parties concerning Attorneys' billing for professional fees and costs, and shall be arbitrated under the Rules for Conduct of Arbitration of Fee Disputes and Other Related Matters. Judgment upon the arbitrator's award may be entered in any court having jurisdiction thereof. Such arbitration award will be final and binding upon the parties hereto.
20. **Fees and Costs.** If any arbitration or legal action is instituted to enforce or declare any party's rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under paragraph 15, **Hold Harmless and Insurance.**
21. **Jury Trial Waiver.** Attorneys and County hereby waive their respective right to trial by jury and agree to accept trial by judge alone for any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Attorneys against County or County against Attorneys on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship of Attorneys and County, County's or work performance hereunder, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.
22. **Venue.** The parties acknowledge and agree that this Agreement was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. Notwithstanding this, the parties agree that the venue for any action or claim brought by any party to this Agreement will be the Central District of San Bernardino County. Each party hereby waives any law or rule of court that would allow them to request or demand a change of venue.
23. **Former County Officials.**
- a. Attorneys agree to provide or has already provided information on former COUNTY administrative officials (as defined below) who are employed by or represent Attorneys. The information provided includes a list of former County administrative officials who terminated COUNTY employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Attorneys. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.
- b. If during the course of the administration of this Agreement, the County determines that the Attorneys has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Agreement may be immediately terminated. If this

Agreement is terminated according to this provision, the County is entitled to pursue any available legal remedies.

24. **Agreement.** The above terms and conditions constitute the complete agreement between the parties hereto. This Agreement was jointly prepared by both parties and the language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be hereunto subscribed by their respective proper officers thereunto duly authorized.

COUNTY OF SAN BERNARDINO

Hanson, Bridget, Marcos, Vlahos & Rudy, LLP
(Print or type name of corporation, company, contractor, etc.)

► _____
Dennis Hansberger, Chairman
Board of Supervisors

By ► _____
Robert Blum

Title: Lead Attorney
(Print or Type)

Dated: _____

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Address: 333 Market Street, 23rd Floor
San Francisco, CA 94105-2173

J. Renee Bastian, Clerk of the Board of Supervisors
of the County of San Bernardino.

By _____
Deputy

Approved as to Legal Form	Reviewed by Contract Compliance	Reviewed for Processing
► _____ County Counsel	► _____	► _____
Date _____	Date _____	Date _____

EXHIBIT "A"

ATTORNEYS' STANDARD HOURLY BILLING RATES

Robert Blum	\$410
Connie Hiatt	\$375
Kevin Gonzalez	\$285